

**SPECIAL MEETING
BOARD OF MAYOR AND ALDERMEN
(ROAD HEARING)**

December 19, 2005

5:30 PM

Mayor Baines called the meeting to order.

Mayor Baines called for the Pledge of Allegiance, this function being led by Alderman Sysyn.

A moment of silent prayer was observed.

The Clerk called the roll.

Present: Aldermen Roy, Gatsas, Guinta, Sysyn, Osborne, Porter, O’Neil,
Lopez, Shea, DeVries, Garrity, Smith, and Forest

Absent: Alderman Thibault

Mayor Baines advised that the purpose of the road hearing is to hear those wishing to speak in favor of or in opposition to proposed street discontinuance petitions, followed by viewing the area of the petitions and determination of the action to be taken on such petitions. Such petitions shall be addressed at which time the Public Works Director shall be requested to make a presentation following which those wishing to speak in favor will be heard, followed by those wishing to speak in opposition. Anyone wishing to speak must first step to the nearest microphone when recognized and state his/her name and address in a clear, loud voice for the record. Each person will be given only one opportunity speak and any questions must be directed to the Chair.

A. *Petition to discontinue a portion of Spruce South Back Street*

Mayor Baines requested that Frank Thomas, Public Works Director, make a presentation.

Frank Thomas, Public Works Director, stated the petition is for a section of Spruce South Back Street, which is 20 feet wide and 50 feet long from Hall Street easterly. Spruce South Back Street was dedicated by a subdivision plan entitled “Plan of Lots of Elliott Manufacturing Company” by Joseph Sawyer dated December 3, 1892. Since the dedication of the street is before 1893 it would need to be released and discharged by the Board of Mayor and Aldermen. No evidence of City utilities were observed on the site based on the search that we have done. A portion farther easterly of the subject tonight has already been discontinued. This is a petition that we support to be discontinued.

Mayor Baines calls for those wishing to speak in favor.

Donna Stone, 423/425 Hall Street, Manchester stated:

I own the property that is located on 423/425 Hall Street. One of my buildings is directly beside the discontinued alleyway so the whole entire length of the building actually abuts part of that alley that is being discontinued. What we are asking for is just a division of the alley. The heating of this building is propane tanks in the back and I am basically just looking to be able to have clear access to those heating units. I am trying to be fair with the next door neighbor and get the property divided. I have spoken to him in the past as I have had problems with the fuel and we couldn't really come to an agreement. I am just trying to be fair. I was the next door neighbor and I got the property divided. I have spoken to him in the past as I have had problems with delivery for fuel and we couldn't really come to an agreement he suggested I complain to the fuel company. So I'm just trying to be fair throughout this whole process.

There was no one further wishing to speak in favor.

Mayor Baines calls for those wishing to speak in opposition.

Sotos Kalioras, 393/345 Spruce Street, Manchester stated:

Mr. Kalioras stated that doing this would not improve things, they park by the side of the house there. In reality I don't like the tanks there they are kind of dangerous. I do have tenants at my house and yes the kids do have access to those and as far as a delivery fuel there hasn't been, there was one time that the driver did not want to go through the cars to deliver the fuel. The rest of the time they have no problem they back up in my driveway only because they fail to clean her side of the debris, so basically she is asking to put a fence up but really it needs to be cleaned up to service her fuel tanks. So at this time I do oppose the fence because it is access to my driveway, and I don't think it is appropriate for a fence to be there.

There was no one further wishing to speak in opposition.

B. *Petition to discontinue a portion of Union East Back Street*

Mayor Baines requested that Frank Thomas, Public Works Director, make a presentation.

Mr. Thomas stated as noted by the Mayor the second petition is for a discontinuance of Union East Back Street. The subject of the discontinuance petition is approximately 60 feet by 10 feet. Union East Back Street was dedicated by a subdivision plan entitled "Land of Mrs. H.C. Lowell" by George H. Allen dated October 13, 1892. This portion of Union Street does not appear to have been open or built for public travel. Since the dedication of the

street is before 1893 it would need to be released and discharged by the Board of Mayor and Aldermen. There is a sewer line that crosses a portion of the discontinuance petition. There is no written formal easement for this sewer so we would recommend as we have done in the past to reserve an easement over the existing sewer. Again, the Highway Department does support this discontinuance petition.

Alderman DeVries stated the 20-foot sewer easement that has been requested, it appears we are releasing 10 feet and the other 10 feet has already been released. Can you address how that would work with the sewer drainage easement?

Mr. Thomas responded I would assume that the portion of the alley that has already been evidently released or obtained ownership on has reserved an easement. Any sewer that we have that cuts across properties that go back years and years we have an easement through prescriptive use. That has been ruled on in the past by the Solicitor's Office. However, where we are taking an action on this particular 10-foot section typically the petitions for discontinuance are subject to reserving any and all easements.

Alderman DeVries asked so are you saying that the provision for this 20 foot sewer drain easement still stands as a request but only 10 feet of that 20 foot easement will fall on this particular property.

Mr. Thomas answered no. The sewer cuts perpendicular across the strip so we would still be looking to reserve all of that sewer easement that crosses over perpendicular.

Mayor Baines called for those wishing to speak in favor.

Douglas W. Draper, 430 Walnut Street, Manchester stated:

My property is the property in the petition. All I am asking for is a subdivision of this property on Union East Back Street. I am glad that you brought up that 20 foot easement because all I am requesting is 10 feet since the other 10 feet has already been taken by the abutter I cannot give an easement on 20 feet. I thought this was addressed already by a letter from Martin Miccio. He had submitted the release and discharge. I just wanted to speak in favor of this and if there is a rebuttal, can I speak to the rebuttal.

Mayor Baines advised that the rules generally provide that you have one opportunity to speak.

Mr. Draper stated I have a problem with this situation because there has been a fence that has been falling over on the other property a fence that is over 40 years old. I have only owned the property for 8 years, and the fence is falling over because the trees that have been pruned from the other side have been pushing over the fence. And when I asked the abutter if I could replace the fence she said no, even though this land was not on her land, she said I

would have to push the fence back to my garage. All I am asking is to be able to take down those trees in this ten foot right of way so that I can replace the fencing.

Mayor Baines noted that they would be going out to visit the site and he could point those things to the members there as well.

Mr. Draper stated he understood that he was trying to be reasonable, she wanted to put the fence back one foot, two feet then three feet, I don't want it back to my garage.

There was no one further wishing to speak in favor.

Mayor Baines called for those wishing to speak in opposition.

Thomas G. Myers, 223 Ridge Road, Manchester NH stated:

Thank you members of this Aldermanic Committee on road hearings for allowing me the opportunity to address this specific petition for the discontinuance of a portion of Union East Back Street. I am a resident of the City. I am a member and representative of a group of family members who own the lot labeled 310-7, otherwise known as 953 Union Street. I have also been asked to speak on behalf of my sister, Cynthia Myers, the sole owner of the lot labeled 310-8, also known as 949 Union Street. We are two separate abutters to the petitioner with the same opinion. We are opposed to this petition. At the very onset of my address to you and without any intentions of disrespect or malice to you Committee members I simply question the legal right or authority to proceed any further in hearing this petition on the grounds that 1) not all of the appropriate abutters had been properly notified by the City Clerk's Office about this or any other hearing regarding this petition; 2) there are major mistakes, discrepancies, false and misleading accusations, issues and questions to this petition package; and 3) this is a private rights issue, not public. The City of Manchester doesn't own nor have any easement rights to the property being petitioned. Union East Back Street doesn't exist and that this is a private subdivision. Allow me to be more specific.

Issue 1: When I said that not all of the appropriate abutters had been properly notified about this or any other hearing regarding this petition I first refer to the...I reference the cover letter to this package from the Office of the City Clerk dated 11/15/2005. I am confused about the intentions of the City Clerk's Office on who the recipient should be – the owner of Lot 310-7 or the owner of Lot 310-8. The one I have is addressed to Cynthia Myers, 953 Union Street. Ms. Myers does not reside at that location nor have other members of my group been notified. Luckily this mailing was corrected by the postal service and delivered to her residence whereupon it was presented to me under the belief that it would only impact the 953 property. This petition will also have a significant impact to my neighbors on lots labeled 310-23 and 310-4. I am uncertain about the opinion of these other lot owners but I am concerned about their interest being represented and whether they have been properly notified of these hearings. I would ask that this Committee obtain a list from the City Clerk on the names and addresses of those receiving written notification. Secondly, I reference

Page 2 of the letter to the Board of Mayor and Aldermen of the City of Manchester from Leo R. Bernier, the Clerk of the Committee on Community Improvement. This letter states, and I quote, "The Committee on Community Improvement respectfully recommends, after due and careful consideration, that a petition for the discontinuance of a portion of Union East Back Street and a petition for the discontinuance of a portion of Spruce South Back Street be referred to a road hearing to be scheduled by the City Clerk." In parentheses it says "unanimous vote." This letter is stamped 10/18/2005. None of the abutters were aware of this meeting; therefore, they had no opportunity to add substantial input. I question the criteria that the Committee on Community Improvement utilized for what they call "due and careful consideration." The second issue that I raised is there are major mistakes, discrepancies, false and misleading accusations, and issues and question to this petition package. I will reference Page 3, the letter from Mr. Draper to the Community Improvement Committee dated August 29, 2005. Specifically I refer to paragraphs 3 and 4 that state, and I quote "My neighbors at 953 Union Street have already acquired 10 feet of this City owned 20 foot right-of-way and I want to acquire the other 10 feet that abuts my property. Enclosed is also a memo only copy of the map entitled "Private Land Sewerage" dated January 24, 1923 on Page 3702. This map indicates that at that date, the 20 foot City-owned right-of-way separating my property at 432-430 Walnut Street and my neighbor's property at 953 Union Street was, in fact, 20 feet wide at that time. Since that date, it is obvious that at some point in time between now and then that these same neighbors acquired 10 feet of that passageway. I am respectfully asking the Committee to allow me the same courtesy of acquiring the other 10 feet of that passageway, which directly abuts my property." This is false and misleading information presented to the Community Improvement Committee by the petitioner. There was no legal documentation or evidence supplied by the petitioner to support this grossly inaccurate assumption and accusation. Ownership of 953 Union Street has been in my family for years. Our deed clearly states what we own and the boundaries of our property. We have no addendum or separate deed, nor have we acquired or taken any additional footage. This so-called Memo Only map has no title or date and is not a legal document for consideration. What's more, the map clearly shows the extension of a building sitting on what Mr. Draper describes as fact and proof of the existence of a 20-foot right-of-way. This is only a Public Works map intended to track the sewer lines. What is fact is that the manhole that is labeled letter "B" rests clearly on my property. Additionally, the petitioner makes no reference that his request will also extend outward to obtain the parcel of land between Lots 310-8 and 310-24. The third issue I raised is that this is a private rights issue and not public. Subsequent to the receipt of this petition package, I had discussions with Alex Asselin and Tom Nichols from the Assessor's Office and with Marty Miccio of the Highway Department who have investigated this petition and they could not find any evidence of ownership nor easement rights given to the City of Manchester regarding the property being petitioned. The letter addressed to the Community Improvement Committee from Frank Thomas, Public Works Director, dated 9/27/05 confirms this. There is a cloud of doubt on the title to this property that must be further investigated by the Committee. I contend that Union East Back Street may not exist and it was a privately owned subdivision.

This parcel of land could be privately owned, therefore, it is not within the authority of this Committee to consider this petition. I close my address to you by recommending that this Committee abstain from ruling on this petition and to refer the matter back to the Committee on Community Improvement for more substantial consideration and investigation. I would also like to take this opportunity to publicly convey to the petitioner, Mr. Draper, that prior to the notice of this meeting my group and sister had not been aware of your intentions to quiet title and obtaining this parcel of land. There has been no communication regarding this matter between the authorized parties. My sister and I have resided in the City all of our lives and this is not how neighbors treat one another here in Manchester. Secondly, I am speculating that Mr. Draper has not properly surveyed his property. He has already asserted ownership of the property by extending new fencing to engulf this 10 feet of land being petitioned. Once more, this extension has encroached onto our lot. He is not seeking permission from this Committee to remove the City's interest in the parcel or requesting forgiveness for his actions. Lastly, regarding the 10 feet of land in dispute if it were to be released and discharged it would be equitable that my group would be entitled to ½ of that. Thank you.

Chairman Shea advised that Mayor Baines had left the meeting momentarily and recognized Alderman Porter.

Alderman Porter stated apparently we have a legitimate disagreement on issues. Could I ask Mr. Draper a question please? You were saying that the property at 953 has acquired 10 feet already?

Mayor Baines returned to the meeting and request Mr. Draper to come to a microphone and advised what I will be recommending...I had a brief conversation with the City Clerk and we are going to go out to the site but I will recommend that this be referred back to the Committee because there are some legitimate issues.

Alderman Porter responded that is where I was going with this. Do we need to spend the time to look at it tonight when there is a legitimate disagreement?

Mayor Baines replied that will be up to the Board but I think one of the things we could do is go out and it might help the Board become familiar with the issue because it may come back again. We can talk about whether we want to go to the site after the gentleman talks.

Alderman Porter asked, Mr. Draper, is it correct that you are saying they have acquired it.

Mr. Draper answered it appears that way from the sewer map, which indicates the right of way.

Alderman Porter asked and Mr. Myers you are saying this is not so and your sister has not acquired that piece.

Mr. Myers answered that is correct.

Alderman Porter moved to refer this back to the Committee on Community Improvement. Alderman Osborne duly seconded the motion.

Alderman Osborne asked can we have Mr. Thomas come back up.

Mr. Draper stated the fence that you will see has been there for over 40 years and you can see how old it is and how it is being pushed over by trees that have grown up on the other side. I had a tree that destroyed the fence on my northerly side and I replaced that fence with a fence that had been there also for over 40 years because it was knocked over by a tree that fell. This isn't anything that I extended and I think it is very unfair to say that I extended the fence 10 feet.

Mayor Baines responded I am going to stop you there because I don't think it is going to be appropriate to get into a debate on the merits at this particular point in time.

Alderman Osborne asked Mr. Thomas can you elaborate a little bit with this piece of property being 10 feet or 20 feet. Is it 20 feet that the City has supposedly discontinued?

Mr. Thomas answered the subject of the petition that is in front of you tonight is a 10-foot wide portion. There is an indication that there is an alley that ran up there at one time that was 20 feet in width. It also appears that somewhere along the line 10 feet of that 20-foot alleyway was obtained by the Myers or the people who owned the Myers property previously.

Alderman Osborne asked how can they obtain something that they don't own. That doesn't make sense to me. They can just put a fence there and so be it? This sounds like a civil matter more than anything else. If the City discontinues 10 feet then we discontinue it.

Mr. Thomas answered that is not the issue in front of you tonight. The issue in front of you tonight is the discontinuance of a portion of an alley that still appears under nobody's ownership that is 10 feet by 60 feet long.

Mayor Baines stated I am going to stop any further conversations of that matter.

Alderman Roy stated I do share some of the concerns of Aldermen Osborne and Porter and obviously our Highway Department but we do have the road hearing this evening and the bus is here and I think as a courtesy to both sides we should at least look at it, come back to

this Chamber and then refer it back to Committee or take action at that point. At least we will have more of the facts than we do by not seeing the property.

Mayor Baines stated I would concur with that.

Deputy City Clerk Johnson stated there are two issues that I want to point out. First of all, there were issues raised by Mr. Myers that we would like to research in the Clerk's Office in terms of notification to meet the requirements of the law so our suggestion was going to be view the property and then table it and allow us to report back along with perhaps the Committee on any other issues you want. Secondly, I would caution the Board that you are actually only looking at a release and discharge or a discontinuance of a street. You are not looking at the civil issues that may be involved and it is just that 10-foot by 60-foot stretch. If we were to take anything else into consideration it would have to go through another process. It is something that is currently laid out on a plan. It is showing...the City never owns anything under the road unless it happens to be part of a parcel that the City originally owned as the Board is probably aware of for the most part. The ownership question is a matter of the courts. It is not a matter of the City. You have a petition before you to discontinue a portion of a roadway that is still showing up on a plan and it is whether or not the City wishes to do that.

Mayor Baines asked what is the motion on the floor right now.

Deputy City Clerk Johnson answered there was a motion to send it back to the Committee on Community Improvement and not to take any other action with it this evening.

Alderman Porter withdrew his motion and Alderman Osborne withdrew his second.

On motion of Alderman Shea, duly seconded by Alderman Porter it was voted to recess the hearing and proceed to view the areas of petitions presented.

Mayor Baines called the meeting back to order at the site of the first petition.

Item 4A *Petition to discontinue a portion of Spruce South Back Street*

Present at the site were: Mayor Baines; Aldermen Roy, Gatsas, Guinta, Sysyn, Osborne, Porter, Shea, DeVries, Garrity, Smith, Forest, O'Neil and Lopez.

Absent was: Alderman Thibault

Mayor Baines requested Mr. Thomas to address the Board regarding the petition.

Mr. Thomas again explained the area of the petition requested to be discontinued.

After viewing the site of the petition, Alderman Lopez moved to discontinue a portion of Spruce South Back Street as petitioned, subject to maintaining any and all easements, which may exist at this time. Alderman DeVries duly seconded the motion. Mayor Baines called for a vote. The motion carried with Alderman Gatsas being duly recorded in opposition.

Mayor Baines called a recess to proceed to the area of the Union East Back Street petition.

Mayor Baines called the meeting back to order at the side of the second petition.

Item 4B *Petition to discontinue a portion of Union East Back Street*

Present at the site were: Mayor Baines; Aldermen Roy, Gatsas, Guinta, Sysyn, Osborne, Porter, Shea, DeVries, Garrity, Smith, Forest, O’Neil and Lopez.

Absent was: Alderman Thibault

Mayor Baines requested Mr. Thomas to address the Board regarding the petition.

Mr. Thomas again explained the area of the petition requested to be discontinued. Mr. Draper and Mr. Myers were both present at the site, where the area could be viewed including the fence and garage mentioned as part of the hearing.

On motion of Alderman Shea, duly seconded by Alderman Porter it was voted to table this petition pending review and report from the City Clerk and the Committee on Community Improvement.

This being a special meeting of the Board, no further business was presented and on motion of Alderman Shea, duly seconded by Alderman Forest it was voted to adjourn.

A True Record. Attest.

City Clerk